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MR. TILAK'S APPLICATION TO THE PRIVY COUNCIL.

ARGUMENT BY MR. H. H. ASQUITH, Q.C., M.P.

THE APPLICATION REFUSED.

FULL REPORT.

On Friday, November 19, the Judicial Committee of the Privy Council, sitting at Whitehall, heard the petition of Mr. Bal Gangadhar Tilak for special leave to appeal against the sentence passed upon him by the High Court of Bombay for inciting to disaffection. The members present were the Lord Chancellor, Lord Hobhouse, Lord Davey, and Sir Richard Couch. Mr. Tilak's petition set forth that at the time of the proceedings he was editor, proprietor, and publisher of a weekly journal at Poona called the *Kesari*, which was issued in the Marathi language, and mentioned that he had been selected by the native community to represent them in the Council of the Governor of Bombay, a nomination confirmed by the Governor. On September 8, he was placed on his trial before the High Court of Bombay on two charges under section 124A of the Penal Code for inciting and attempting to incite to disaffection, and the jury, by a majority of six to three, found him guilty, and he was sentenced to eighteen months' rigorous imprisonment. On September 18, he applied to the High Court of Bombay, for leave to appeal to her Majesty in Council, but the Court refused application. He now submitted that the verdict and sentence pronounced by the Court were wrong in law and should be set aside, and asked that the Queen in Council would grant him special leave to appeal against the conviction.

Mr. H. H. Asquith, Q.C., M.P., Mr. W. C. Bonnerjee, Mr. J. D. Mayne and Mr. G. A. Blair, (instructed by Messrs. Payne and Latter) appeared for the Petitioner. Mr. Arthur Cohen, Q.C., (with him Mr. J. H. A. Branson,) instructed by Mr. Arthur Wilson, represented the Secretary of State for India.

Mr. ASQUITH, in opening the case, said: The Petitioner was charged with an offence under Section 124A of the Indian Penal Code, which I will read in a moment, and after the trial which lasted some days before Mr. Justice Strachey, and a jury of nine, he was on September 14 last found guilty by a majority I think of three, and sentenced to eighteen months' rigorous imprisonment. The section under which the proceedings were taken was Section 124A and I should say a section which is not found in the Code in the shape in which the Code was passed in 1860, but was introduced into it by an Act No. 27 dated 1873.

SECTION 124A AND THE EXPLANATION.

The Section is in these words:

"Whoever by words, either spoken or intended to be read, or by signs or by visible representation or otherwise, excites or attempts to excite feelings of disaffection to the Government established by law in British India, shall be punished with transportation for life or for any term, to which fine may be added, or with imprisonment for a term which may extend to three years, to which fine may be added, or with fine."

Then follows an "Explanation" in these words:—

"Such a disapprobation of the measures of the Government is as compatible with a disposition to render obedience to the lawful authority of the Government, and to support the lawful authority of the Government against unlawful attempts to subvert or resist that authority, is not disaffection. Therefore the making of comments on the measures of the Government with the intention of exciting only this species of disapprobation is not an offence within this Clause."

Under that section the Petitioner was charged on two counts, first of all with exciting feelings of disaffection, and secondly with attempting to excite feelings of disaffection; and the words of the section which, your Lordships will observe, apply to words spoken or attempted to be read, and the words relied upon in support of these charges, are to be found in two articles published in the issue of the 15th of June, of a newspaper called the *Kesari*—a newspaper published at Poona, in the Marathi language, of which Mr. Tilak the petitioner, is admittedly the proprietor and editor.

THE INCRIMINATED ARTICLES.

I think it would be convenient if I at once ask your Lordships to look at those articles which formed the subject matter of the charge, because I may say that the substantial ground on which this application is rested is, that the learned judge in summing up, having to direct the jury as to the meaning of the section which I have read, and its application to the matter before them, misdirected them in an important respect. There are two articles relied upon. I should say that these articles were in the Marathi language, and we have two translations of them, a literal translation and what is called a "free" translation, and the originals also. The first article is—describing it roughly—a report of proceedings which had taken place in connexion with a celebration of Shivaji, who is one of the heroes of the Mahratta race, and is regarded as the founder of their power. It is necessary to mention, in order to explain some of the references in both articles in question, that it appears that there has been of late years a revival of the memory of Shivaji, some correspondence having taken place some years ago in reference to the neglect and disrepair of his tomb, which led to a public movement for putting the tomb in proper order. That, in turn, seems to have aroused considerable interest in the details of his history, which became the subject of correspondence in the Indian newspapers, and in the last two or three years it has become the custom in this part of India to hold celebrations on certain anniversaries in connexion with Shivaji's life, namely, the anniversaries of his birth and of his coronation. The proceedings here reported took place at one of these celebrations, I think on the anniversary of his coronation. It appears that the people of Poona came together to celebrate this on the 12th

of June, and among those who took part in the proceedings was the present petitioner, Tilak. Two other gentlemen also took part. One was Professor Bhanu, and the other was Professor Jinsivale. They are important here as their addresses are part of the matter incriminated. We have not got the original of the passage in the report which is incriminated. We have simply got a translation. It begins at the conclusion of a lecture. Perhaps I ought to add, by way of explanation, in order to make clear what this refers to, that one of the incidents in the life of Shivaji which has excited the greatest amount of controversy is the circumstances under which he put to death one, Afzul Khan, an emissary of the Muhammadan ruler of Vijyapur. One set of controversialists maintain that Shivaji decoyed him, under the pretence that he was about to surrender himself, into his tent and murdered him; and the other set contend that it was an act of self-defence, or that Shivaji was provoked. After a lecture had been delivered on this subject by Professor Bhanu,

> "At the conclusion of the lecture Professor Bhanu said: Every Hindu, every Maratha, to whatever party he may belong, must rejoice at this (Shivaji) festival. We are all striving to regain (our) lost independence."

I ought to pause on that word "independence." There is some doubt, as appears from the proceedings at the trial, as to what is the exact English equivalent of the Marathi word used, which is translated here "independence." One of the witnesses being asked what the word "Swatantrya" really means, said that "swa" means "own" and "tantrya" means "control." It would seem, therefore, that they were under the control of some others. It goes on to say that Mill's essay on Liberty might be translated as "Swatantrya." I understand that that would be regarded as a type of what is meant by the word, "so again in freedom of thought or opinion, or speech or freedom of discussion, liberty of the press, freedom of will, freedom of action," and so on. That is the word which is here translated "independence." (Continuing to read.)

> "We are all striving to regain (our) lost independence, and this terrible load is to be uplifted by us all in combination. It will never be proper to place obstacles in the way of any person who, with a true mind follows the path of uplifting this burden in the manner he deems fit. Our mutual dissensions impede our progress greatly. If anyone be crushing down the country from above, cut him off, but do not put impediments in the way of others. Let bygones be bygones; let us forget them and forgive one another for them. Have we not had enough of that strife, which would have the same value in the estimation of great men as a fight among rats and cats? All occasions like the present festival which (tend to) unite the whole country must be welcome."

This explains the allusion here to mutual dissensions and the necessity of what he calls unity. It appears in the evidence that there were in Poona at this time, among what may be called the popular party of the place, two factions or sections, one of them which is called the "orthodox" section (of which the leader was Mr. Tilak, the present petitioner), and the other the "reform," or more advanced section, of which this Professor Bhanu was himself a member. These two sections were in the habit of carrying on controversies the one with the other, and it was, apparently, in reference to that that he makes this appeal on an occasion like the present festival that they should all unite. Afterwards the other, Professor Jinsivale, said:

> "If no one blames Napoleon for committing two thousand murders in Europe; (and) if Cæsar is considered merciful, though he needlessly committed slaughter in Gaul (*i.e.*, France) many a time, why should so virulent an attack be made on Shivaji Mahárájá for killing one or two persons? The people who took part in the French Revolution denied that they committed murders, and maintained that they were (only) removing thorns from (their) path; why should not the same principle (? argument) be made applicable to Maharashtra? Being inflamed with partisanship, it is not that we should keep aside our true opinions. It is true that we must (*i.e.*, should not hesitate to) swallow down our opinions on any occasion when an expression of them might be thought detrimental to the interests of the country."

The Professor—

> "concluded his speech by expressing a hope that next year there will be witnessed greater unity amongst the various parties in Poona on the occasion of this festival."

Your lordships will observe the allusions there to Cæsar and the French Revolution, and it is reasonably plain from the context that the subject he is alluding to is this controversy, whether or not a man like Shivaji would be justified in taking the law into his own hands, and putting a man to death as he did. After the conclusion of this speech Mr. Tilak commenced his discourse:

> "It was needless to make fresh historical researches in connexion with the killing of Afzul Khan. Let us even assume that Shivaji first planned and then executed the murder of Afzul Khan. Was this act of the Mahárájá good or bad? This question which has to be considered should not be viewed from the standpoint of even the Penal Code, or even the Smritis of Manu or Yagnavalkhya, or even the principles of morality laid down in the Western and Eastern ethical systems. The laws which bind society are for common men like yourself and myself. No one seeks to trace the genealogy of a Rishi, nor to fasten guilt upon a king. Great men are above the common principles of morality. These principles fail in their scope to reach the pedestal of great men. Did Shivaji commit a sin in killing Afzul Khan, or how? The answer to this question can be found in the Mahabharat itself. Shrimat Krishna's advice (teaching) in the Geeta is to kill even our teachers (and) our kinsmen. No blame attaches (to any person) if (he) is doing deeds without being actuated by a desire to reap the fruit (of his deeds). Shri Shivaji Mahárájá did nothing with a view to fill the small void of his own stomach (*i.e.*, from interested motives). With benevolent intentions he murdered Afzul Khan for the good of others. If thieves enter our house and we have not (sufficient) strength in our wrists to drive them out, we should, without hesitation, shut them up and burn (them) alive. God has not conferred upon the Mlenchhas—[Your lordships will observe a note here that that is "The generic term for a barbarian or foreigner, *i.e.*, for one speaking any language but Sanscrit and not subject to the usual Hindu institutions"]—"the grant, inscribed on a copper plate, of the kingdom of Hindustan. The Mahárájá strove to drive them away from the land of his birth; he did not thereby commit the sin of coveting what belonged to others. Do not circumscribe your vision like a frog in a well; get out of the Penal Code, enter into the extremely high atmosphere of the Shrimat Bhagvadgeeta, and then consider the actions of great men."

In point of fact a different standard of morality is to apply in judging the actions of Shivaji from the laws that bind society and "common men like you and me." I have already told you that he belonged himself to a different party. He says:

> "A country which (*i.e.*, a people who) cannot unite even on a few occasions should never hope to prosper. Bickerings about religious and social matters are bound to go on until death; but it is most desirable that on one day out of the 365 we should unite at least in respect of one matter. To be one in connexion with Shivaji does not mean that we are completely to forget our other opinions. For quarrelling there are the other days, of course. We should not forget that Ram and Ravan felt no difficulty whatever to meet in the same temple on the occasion of worshipping (the God) Shankar. After the lecture, Pad (verses) of the Sanmitra Samaj and Maharashtra Mela were sung, and this brought the second days' (celebration) to a close."

That is the first of the two articles relied upon.

NOT EDITORIAL ARTICLES.

Lord HOBHOUSE: This article is a report.

Mr. ASQUITH: It is a report of proceedings.

Lord HOBHOUSE: It is not an original article.

Mr. ASQUITH: No. I ought to say that between the poem, which I am about to read, called "Shivaji's Utterances," which appeared in the same number of the same paper as the article, or the report, which I have just read, there was an editorial article which is set out in the papers, but which I do not think it is necessary to read. It is an editorial article on the Queen's Jubilee, published about the time, or immediately before the time, of the celebration of the Queen's Jubilee, and Mr. Tilak, the editor of the paper, published a series of articles, I think three or four, on that subject. It is admitted by the

Advocate-General, and certainly it is pointed out by the learned judge in summing-up, that this article on the Queen's Jubilee, which is intermediate between the report and the poem, contains nothing that is objectionable on political or other grounds, but is a reasonable statement of the grounds upon which Englishmen might rejoice in the celebration of her Majesty's sixtieth year of reign. I only mention that because it is the only thing in this number of the paper which really proceeded from the pen of Mr. Tilak himself. Now I call your lordships' attention to the poem which is called "Shivaji's Utterances."

Lord HOBHOUSE: Did it appear in the same paper, do you say?

Mr. ASQUITH: Yes, my lord—on June 15, 1897. I think the shortest way would be for me to read it:

"By annihilating the wicked I lightened the great weight on the terraqueous globe. I delivered the country by establishing Swarajya"—[that is literally, one's own government, native rule]—"by saving religion, I betook myself to heaven to shake off the great exhaustion which had come upon me. I was asleep, why, then, did you, my darlings, awaken me? I had planted upon this soil the virtues that may be likened to the Kalpavriksha"—[That means "one of the five trees of Indra's heaven which yields whatever may be desired]—"of sublime policy (or morality) based on a strong foundation, valour in the battlefield like that of Karna, patriotism, genuine dauntlessness, (and) unity the best of all. Perhaps you may now wish to show me the delicious fruits of these. Alack! what is this? I see a fort has crumbled down through (mis)fortune I get a broken stone to sit upon. Why does not my heart break like that this day? Alas! Alas! I now see with (my own) eyes the ruin of (my) country. Those forts of mine, to build which I expended money like rain, to acquire which fresh (and) fiery blood was spilled there, from which I sallied forth roaring like a lion through the ravines, have crumbled down; what a desolation is this. Foreigners are dragging out Lakhsmi violently by the hand (by means) of persecution."

Lakhsmi means goddess of wealth, and your lordships will see by the note that the secondary meaning of the expression is got at by substituting "by (levying) taxes" for "by the hand"—

"Along with her plenty has fled, (and) after (that) health also. This wicked Akabaya (misfortune) stalks with famine through the whole country. Relentless death moves about spreading epidemics of diseases. Say, ye, where are those splendid Mavlas my second lives (*i.e.* beloved), who promptly shed their blood on the spot where my perspiration fell? They eat bread once (in a day) but not enough of that even. They toil through hard times by tying up their stomachs (to appease the pangs of hunger). Oh, people, how did you tolerate in the Rihetra the incarceration of those good preceptors, those religious teachers of mine, the Brahmins, whom I protected, (and) who while they abided by their own religion in times of peace, forsook the Larbha—

THAT IS THE SACRED GRASS USED IN SACRIFICES—

in (their) hands for arms which they bore when occasion required. The cow, the foster mother of babes when (their) mother leaves (them) behind, the mainstay of the agriculturists, the imparter of strength to many people which I worshipped as my mother, and protected more than my life, is taken daily to the slaughter-house and ruthlessly slaughtered (there). He himself came running exactly within the line of fire of (my) gun?"

Perhaps I ought to explain that these passages which follow in inverted commas—I think it reads pretty clearly from the context—are supposed to be pleas put forward by Englishmen, or persons not natives, who are accused of having shot or injured natives; and first

"He himself came running exactly within the line of fire of (my) gun? 'I thought (him to be) a bear?' . . . . 'Their spleens are daily enlarged.' How do the white men escape by urging these meaningless pleas? This great injustice seems to prevail in these days in the tribunals of justice; could any man have dared to cast an improper glance at the wife of another, a thousand sharp swords (would have) leaped out of their scabbards instantly. Now (however) opportunities are availed of in railway carriages, and women are dragged by the hand. You eunuchs! how do you brook this. Get that redressed. He is mad."

This, no doubt, is attempting to give some of the grounds for superseding the native princes.

"Lift him up and send him at once on a pilgrimage. He is fond of pleasure. Deprive him of his powers, saying that it would be for a time only. This is the way in which royal families are being handled now! What misfortune has overtaken (the land)? How have all these kings become quite effeminate like those on the chess board? How can I bear to see this heartrending sight? I turn (my) glance in another direction after telling (*i.e.*, leaving with you) a brief message. Give my compliments to my good friends, your rulers, over whose vast dominions the sun never sets. Tell them—'how have you forgotten that old way of yours,' when with scales in hand you used to sell (your goods) in (your) warehouses. (As my) expeditions in that direction were frequent, it was at that time possible (for me) to drive you back to your own country. The Hindus, however, being magnanimous by nature, I protected you. Have you not thus been laid under deep obligations? Make then your obligations? Make then your subjects, who are my own children, happy. It will be good for (your) reputation, if you show your gratitude now by discharging this debt (of obligation)."

LORD HOBHOUSE: Is that what you call the second article on which the indictment proceeded?

Mr. ASQUITH: Yes, my Lord. I have now read the poem. The first article is a report of a meeting which took place at the end of the lecture, and the second article consists of those utterances in this poem—the supposed utterances that are put into the mouth of Shivaji. Now, my Lord, I may say as regards the evidence at the trial, the evidence consisted almost entirely of a proof of what indeed, was not disputed—that Mr. Tilak was the proprietor and editor of this Journal—and of a certain amount of controversy as to the proper English translation of various words and phrases both in the report of the proceedings at the meeting and in this poem that was put into the mouth of Shivaji.

THE PLAGUE IN POONA.

But it was also elicited at the trial, in cross-examination, that some months before these articles were published, which was on June 15, the plague had been raging in Poona, and there had been a controversy in the native community there as to the measures adopted by the Government for stamping it out and preventing its spread. But it was shown that Mr. Tilak, both by comments in his newspaper, and as a private citizen by representations addressed by him to the Government, had very strongly urged that the native community ought to co-operate in those measures which they had attempted to criticise—that they ought to co-operate in all proper measures for the segregation of the sufferers, and for the prevention by all these means, of the spread of the epidemic. He started a hospital himself, and it was put in evidence, and shown, that he tried to prevent the exodus of the native community which was going on, and in other ways to co-operate with the authorities in the efforts which they put forth. It also appears that this state of things, which undoubtedly was very serious, practically came to an end by the 18th of May, the measures taken by the Government proving successful, the plague having almost ceased, and the soldiers who had been employed as agents in endeavouring to cope with it, and to order sanitary measures, being withdrawn. A month almost (from the 18th of May to the 15th of June, when these articles were published) had elapsed since that state of things had come to an end. Those, my Lords, are all the facts which were before the Court when the learned judge proceeded to direct the jury in a manner to which I am about to call your Lordship's attention.

Lord HOBHOUSE: Do you not mention three articles?

Mr. ASQUITH: There are only two incriminated articles.

Lord HOBHOUSE: Only two subject to indictment?

Mr. ASQUITH: Yes my lord. I do not propose to read them, for I do not really think it is material for the purpose I have in view, but there are in this book a number of articles which were put in, some by the prosecution and some by the defence, from back numbers of this paper, and some from other news-

papers, like the *Times of India*, in order to show the sort of controversies that were going on at the time in reference to Shivaji's Tomb and so on, and also the attitude which Mr. Tilak had taken up.

MR. JUSTICE STRACHEY'S SUMMING UP.

I now come to the summing-up of the learned judge, but I only want to read the material parts of it, because the earlier part is taken up largely with the question whether another person who is charged also with being a party to the publication of these matters should properly be convicted or not. The learned judge says:

"Now if you are satisfied that the two prisoners, or either of them, are responsible for the publication of these two articles in the *Kesari*, the next question is whether that makes them guilty of an offence against Section 124A of the Penal Code? Did they, or either of them, by means of the articles, excite, or attempt to excite, in their readers, feelings of disaffection to the Government established by law in British India? That is a question of the meaning and effect of the articles, and the intention of the accused in publishing them, and it is entirely and exclusively a question for you to decide. But there is a preliminary question to be considered, and that is, what is the meaning of Section 124A of the Penal Code, and what is the nature of the offence which it makes punishable. That preliminary question is for me to decide. The law requires you to accept from me the explanation of the section and of the offence; and it is then for you to determine upon the evidence before you, whether the facts constituting the offence as explained by me have been established, and whether the prisoners are guilty or not. Now I come to deal with the law as contained in Section 124A of the Indian Penal Code, and before I read it, I would point out that there are certain matters which I shall ask you to dismiss altogether from your minds. In the first place, in construing the section, I do not propose to discuss the English law of seditious libel, though I have most fully considered the cases to which Mr. Pugh has referred, and the writings of Sir James Stephen and others on the subject. I would point out that the opinion of Justice Stephen could have no bearing on the case, and the explanation which I shall give you is not in any way inconsistent with the best English authorities. In England seditious libel is a common law misdemeanour and not a statutory offence, *i.e.*, not created by Act of Parliament, but elaborated by the decisions of judges, and did not correspond with Section 124A of the Indian Penal Code. I have considered the matter carefully and I do not think that English cases can have any bearing in the matter. I therefore ask you to dismiss from your minds the Trafalgar Square incident, as in India the law applied is the Penal Code. Well, now, I ask you to look at the section and the way it is worded. It says: 'Whoever by words, either spoken or intended to be read, or by signs, or by visible representations, or otherwise, excites, or attempts to excite feelings of disaffection to the Government established by law in British India, shall be punished with transportation for life, or for any term, to which fine may be added, or with imprisonment for a term which may extend to three years, to which fine may be added, or with fine.' To the above is appended the following Explanation: 'Such a disapprobation of the measures of the Government as is compatible with a disposition to render obedience to the lawful authority of the Government and to support the lawful authority of the Government against unlawful attempts to subvert or resist that authority, is not disaffection. Therefore the making of comments on the measures of the Government with the intention of exciting only this species of disapprobation is not an offence within this clause.' "

Your Lordships will observe that he says:

"The section consists of two parts—first, a general clause and then an Explanation. The object of the Explanation is a negative one, to show that certain acts which might otherwise be regarded as exciting or attempting to excite disaffection are not to be so regarded."

I pause there to remark that it does not appear to me to be an accurate statement of the object of the "Explanation."

THE "EXPLANATION" NOT AN "EXCEPTION."

It would be a perfectly accurate statement of the object of an "exception," but to assume that it is the function of the "Explanation" exhaustively to enumerate all the cases which do not fall within the enactment of the section appears to be not justified by the use which is made of what are called "Explanations," and certainly not justified in the present case.

"We must, therefore, first consider the first or general clause of the section by itself, and then see how far the Explanation modifies it. The offence as defined by the first clause is exciting or attempting to excite feelings of *disaffection* to the Government. What are "feelings of disaffection"? I agree with the late Chief Justice of Bengal, Sir Comer Petheram, that disaffection means simply the absence of affection."

That is an illusion, my Lords, to a case—and I believe the only other case—in which this article in the Code has ever been the subject of judicial interpretation by the Indian Courts. It is a case that was tried before Sir Comer Petheram, and it is the case of the Queen against J. C. Bungobarsi, and it is reported in the 19th Volume of the Calcutta Reports, page 35.

DISAFFECTION AS "ABSENCE OF AFFECTION!"

I will refer afterwards to what Sir Comer Petheram did say. But the learned judge is not accurate in saying that Sir Comer Petheram said what he alleges him to have said—namely, that disaffection means simply the absence of affection; what he said was that it means the contrary of affection.

"I agree," he says, "with the late Chief Justice of Bengal, Sir Comer Petheram, that disaffection means simply the absence of affection. It means hatred, enmity, dislike, hostility, contempt, and every form of ill-will to the Government. Disloyalty, is perhaps, the best general term comprehending every possible form of bad feeling to the Government. It means everything which indicates hostility to Government. That is what the law means by the disaffection which a man must not excite or attempt to excite; he must not make or try to make others feel enmity of any kind towards the Government. You will observe that the amount or intensity of the disaffection is absolutely immaterial, except perhaps in dealing with the question of punishment, if a man excites or attempts to excite feelings of disaffection, great or small, he is guilty under the section. In the next place, it is absolutely immaterial whether any feelings of disaffection have been excited or not by the publication in question. There are two charges against each of the prisoners, one of actually exciting feelings of disaffection to the Government, and the other of attempting to excite feelings of disaffection. It is immaterial whether a person excites these feelings or attempted to excite them. If you are satisfied that he has done so, you will, of course, find him guilty. But if you should hold that that charge is not made out, and that no one is proved to have been excited to entertain feelings of disaffection to the Government by reading these articles, still that alone would not justify you in acquitting the prisoners. For each of them is charged not only with exciting feelings of disaffection, but also with *attempting* to excite such feelings."

Of course I do not quarrel with that particular passage I have just read. "Again," a little lower down the learned judge says:

"It is important that you should fully realize another point. The offence consists in exciting or attempting to excite in others certain bad feelings towards the Government. It is not the exciting or attempting to excite mutiny or rebellion, or any sort of actual disturbance, great or small. Whether any actual disturbance or outbreak was actually caused by these articles is absolutely immaterial. If the accused intended by the articles to excite rebellion or disturbance, his act would doubtless fall within Section 124A, and would probably fall within other sections of the Penal Code. But even if he neither excited nor intended to excite any rebellion or outbreak or forcible resistance to the authority of the Government, still, if he tried to excite feelings of enmity to the Government, that is sufficient to make him guilty under the section. I am aware that some distinguished persons have thought that there can be no offence against the section unless the accused either counsels or suggests rebellion or forcible resistance to the Government. In my opinion that view is absolutely opposed to the

express words of the section itself, which as plainly as possible makes the exciting or attempting to excite certain feelings, and not the inducing or attempting to induce to any course of action such as rebellion or forcible resistance to overthrow the ruler of the country, the test of guilt. I can only account for such a view by attributing it to a complete misreading of the explanation attached to the section, and to a misapplication of the explanation beyond its true scope. Lastly, the authority or institution against which it is an offence to excite feelings of disaffection is 'the Government established by law in British India.' What is the meaning of that expression? It means, in my opinion, British rule and its representatives and administrators as such—the existing political system as distinguished from any particular set of administrators. The result is that you have to apply this test to the case of each of these two prisoners: Did he, by these articles, try to excite in the minds of the readers feelings of disloyalty or hatred to the Government? Now I come to the Explanation to Section 124A, and the question is how far it qualifies the section as just explained by me, and whether it supplies you with any other test to apply to these articles. Let us read the Explanation again: 'Such a disapprobation of the measures of the Government as is compatible with a disposition to render obedience to the lawful authority of the Government and to support the lawful authority of the Government against unlawful attempts to subvert or resist that authority, is not disaffection. Therefore the making of comments on the measures of the Government with the intention of exciting only this species of disapprobation, is not an offence within this clause.' Let us consider each part of this Explanation, as we have considered each part of the first clause. Observe first, that, as I have already said, while the first clause shows affirmatively what the offence made punishable by the section is, the Explanation states negatively what it is not: it says that something 'is not disaffection,' and 'is not an offence within this clause.' Therefore its object is to protect from the condemnation pronounced by the first clause certain acts which it distinguishes from the disloyal attempts which the first clause deals with. The next and most important point for you to bear in mind is that the thing protected by the Explanation is 'the making of comments on the measures of the Government' with a certain intention. This shows that the Explanation has a strictly defined and limited scope. Observe that it has no application whatever unless you come to the conclusion that the writings in question can fairly and reasonably be construed as 'the making of comments on the measures of Government.' It does not apply to any sort of writing except that. It does not apply to any writing which consists not merely of comments upon the Government measures, but of attacks upon the Government itself."

My Lords, this is a part of the learned judge's summing-up to which I shall have to take exception.

"It would apply to any criticisms of legislative enactments, such as the Epidemic Diseases Act, or any particular tax, or administrative measures, such as the steps taken by the Government for the suppression of plague or famine. But if you come to the conclusion that these writings are an attack not merely upon such measures as these, but upon the Government itself, its existence, its essential characteristics, its motives, or its feelings towards the people, then you must put aside the Explanation altogether, and apply the first clause of the section. In the next place, supposing that you are satisfied that these writings can fairly and reasonably be construed as 'comments on the measures of the Government,' and not as attacks upon the Government itself, still you cannot apply the Explanation unless you believe that such comments were made with the intention of exciting only 'such a disapprobation of the measures of the Government as is compatible with a disposition to render obedience to the lawful authority of the Government, and to support the lawful authority of the Government against unlawful attempts to subvert or resist that authority.' This, you will see, draws a distinction between attempting to excite feelings of 'disaffection' to the Government, and intending to excite only a certain species of 'disapprobation' of Government measures as contrasted with 'disaffection' to the Government? I agree with Sir Comer Petheram in the Bungobasi case that while disaffection means the absence of affection, or enmity, disapprobation means simply disapproval; and that it is quite possible to like or be loyal to anyone, whether an individual or a government, and at the same time to disapprove strongly of his or its measures. This distinction is the essence of the section. It shows clearly what a public speaker or writer may do, and what he may not do. A man may criticise or comment upon any measure or act of the Government, whether legislative or executive, and freely express his opinion upon it. He may discuss the Income Tax Act, the Epidemic Diseases Act, or any Military Expedition, or the suppression of plague or famine, or the administration of justice. He may express the strongest condemnation of such measures, and he may do so severely and even unreasonably, perversely, and unfairly. So long as he confines himself to that he will be protected by the Explanation. But if he goes beyond that, and whether in the course of comments upon measures or not, holds up the Government itself to the hatred or contempt of his readers, as, for instance, by attributing to it every sort of evil and misfortune suffered by the people, or dwelling adversely on its foreign origin and character, or imputing to it base motives, or accusing it of hostility or indifference to the welfare of the people, then he is guilty under the section, and the Explanation will not save him. The object of the Explanation is to protect honest journalism and *bona fide* criticism of public measures and institutions with a view to their improvement, and to the remedying of grievances and abuses, and to distinguish this from attempts, whether open or disguised, to make the people hate their rulers. So long as a journalist observes this distinction he has nothing to fear. It seems to me that this view of the law secures all the liberty which any reasonable man can desire, and that to allow more would be culpable weakness, and fatal to the interests not only of the Government, but of the people. But now, there are other words in the Explanation which we have still to consider. To come within the protection of the Explanation, a writing must not only be the making of comments on Government measures with the intention of exciting only disapprobation of them as distinguished from disaffection to the Government, but the disapprobation must be 'compatible with a disposition to render obedience to the lawful authority of the Government, and to support the lawful authority of the Government against unlawful attempts to subvert or resist that authority.' What that means is that even exciting disapprobation of Government measures may be carried too far. For instance, if a man published comments upon Government measures which were not merely severe, unreasonable or unfair, but so violent and bitter, or accompanied by such appeals to political or religious fanaticism, or addressed to ignorant people at a time of great public excitement, that persons reading those comments would carry their feelings of hostility beyond the Government measures to their author, the Government, and would become indisposed to obey and support the Government, and if it could fairly be gathered from the writing as a whole that the writer or publisher intended these results to follow, then he would be guilty under the section and would not be protected by the Explanation. Observe the nature of this 'disposition' which makes the whole difference between a 'disapprobation' of measures which amounts to 'disaffection' to Government, and a disapprobation which does not. It is not merely 'a disposition to render obedience to the lawful authority of the Government.' It is a disposition both to render obedience and also to support the lawful authority of the Government against unlawful attempts to subvert or resist it. And it is a disposition to support that lawful authority against unlawful attempts not only to 'resist' it, that is, to oppose it—but also to 'subvert' it—that is, to weaken and undermine it by any unlawful means whatever. And, lastly, it is a disposition to support the Government against all such unlawful attempts whenever occasion may arise, not only against any particular unlawful attempt, proceeding or impending at the time of the publication. I believe that it is an inaccurate reading of this part of the Explanation, a too exclusive attention to the expressions about obedience and resistance, and an insufficient attention to other expressions equally important, which has caused some people to misunderstand the whole section, and to imagine that no one can be convicted under it even if he assails the Government itself, and not merely

Government measures, unless he counsels or suggests rebellion or forcible resistance. You will thus see that the whole question is one of the intention of the accused in publishing these articles. Did they intend to excite in the minds of their readers feelings of disaffection or enmity to the Government? Or did they intend merely to excite disapprobation of certain Government measures? Or did they intend to excite no feeling adverse either to the Government or its measures, but only to excite interest in a poem about Shivaji and a historical discussion about his alleged killing of a Muhammadan general? These are the questions which you have to consider."

Then the learned judge goes on to say that you must consider the circumstances under which a publication of this kind may be made, and the persons to whom it is immediately addressed, which, of course, no one will deny as being true in law. He says:—

"Therefore, in judging of the intention with which the accused published these articles, you must first of all consider how such articles would naturally affect the minds of people like the readers of the *Kesari*, at that particular time, June 15, in the then existing state of the country and of public feeling."

There was no evidence before the Court as to what was the state of public feeling and the state of mind of the people of Poona at this particular time, June 15, except the fact which I have already stated to your Lordships of what had taken place in the earlier months of the year—the state of things which had previously existed having come to an end as far back as May 18. I pass on because there is nothing that is material to the point that I desire to make, over the next two or three pages of the judgement. The learned judge proceeding to deal with the articles themselves, goes into this question of the murder of Afzul Khan, and the controversy which was raised in India and elsewhere as to whether Shivaji was justified in putting Afzul Khan to death. Then he says:

"In 1894 a gentleman called Mr. Karkaria, who interested himself in historical researches, gave a lecture on the murder of Afzul Khan. He discussed the question to what extent Shivaji ought to be condemned for the act. The purport of his lecture was to justify Shivaji to a certain extent, and to contend that Gopinath Pantoji," [that is the man who was the agent in the affair] "was not a servant of Afzul Khan. He also said that what Shivaji did was done for the purpose of self-defence, as Afzul Khan would have murdered him if he had not murdered Afzul Khan. We have to consider how far such a discussion is justifiable. I see no reason why a person should not discuss in a proper moderate way the question whether the assassination was justifiable. But although these are subjects of legitimate comment and discussion, you will readily recognise that they are rather delicate subjects for a man of importance—a leader of the people, that is to say, ought to be careful as to the spirit in which they are discussed in a mixed audience. It is one thing to discuss it amongst a number of philosophers, it is another to discuss it amongst an ignorant mob. This question as to whether Shivaji murdered Afzul Khan, and whether that murder was justified, is delicate in that sense, and although in a proper way discussion does no harm, and may be very interesting, they are topics which men under favourable circumstances may very easily twist. It is quite legitimate for Mahrattas to take pride in Shivaji and discuss his exploit, but bearing in mind that he was a great Hindu ruler, and that Hindu rule was overthrown by the British, the subject is a delicate one. It obviously lends itself to orations which might inflame people to seek to regain the state of independence they had under him; that might soon be made a burning topic, and therefore it behoves people to be very careful how they deal with a subject of that kind. You must consider whether it was discussed in an innocent way, or whether he had any intention of dealing with it in a dangerous way."

The learned judge goes on, in the middle of the next page, to describe what he supposes to be the state of things at Poona at the time this publication took place:

"I have shown," he says, "that up to 1896 everything was fairly peaceable, and no particular excitement prevailed, so far as can be gathered from the evidence before us here. The discussion of Shivaji was not to be objected to so long as ordinary times prevailed and circumstances were favourable. But when the times are exceptionable it becomes a more serious matter, and we have to scrutinise most carefully the intentions of people under that circumstance. The state of things in 1896 did not continue. We know quite well that famine appeared in the land, and spread over a vast area of the country. Plague, which commenced first in Bombay, spread to various parts of the country and to Poona. Great distress naturally followed in the wake of famine and of plague, and Government had to come forward and deal with plague as well as famine. It had to adopt measures appropriate for suppressing the plague, which had led to the goods of this country being boycotted all over the world, and those measures being opposed to the sentiments of many of the people, the necessary interference with their domestic habits created great excitement. Government had to take steps which were unpopular, and especially had to resort to segregation, separating persons suffering from the disease from persons not attacked. In addition, to find out cases which had been concealed, house-to-house visitation was resorted to in order to discover concealed cases of plague, and in Poona it was deemed necessary to employ British soldiers to form the search parties. I do not wish to question in the slightest degree whether this was a necessary measure or not. I am only reminding you that it was adopted, and an inflamed state of feeling was the result. Amongst a considerable portion of the people accusations were made against the British soldiers to the effect that they had insulted women and committed other deeds, in regard to which no evidence, so far as I know, has been forthcoming."

I am not aware that there was any evidence whatever before the Court that that state of things existed.

"The result was what you would expect amongst people of that kind—easily alarmed and suspicious—and they regarded the measures taken as an unwarrantable interference in their domestic affairs. It was a very difficult position both for the Government and people. The inevitable result was friction and a state of tension and excited feeling that went on for a considerable time, and culminated in the murders on the night of June 22 of Mr. Rand and Lieut. Ayerst."

Very great exception can and ought to be taken to that statement of the learned judge, which is entirely without any evidence of any sort or kind; in fact he had no right to take judicial notice of the fact that this murder had occurred, or to speak of the state of tension and excited feeling as having gone on for a considerable time, and culminating in a murder which takes place a week after the publication of these articles, and to say that without any evidence before the Court could justify the statement was, I contend on behalf of the Petitioner, very seriously to prejudice his case. It is quite true, the learned judge goes on to say:

"I do not wish to suggest in any way that there is the relation of cause and effect between either of those articles and that abominable murder. The Advocate-General said that he could not prove that these murders were caused by these articles, and for that reason I ask you to put that idea out of your minds. But what is clear is, that a state of feeling was so excited as not to be equalled by anything that had happened for a long time past."

The judge is charging a jury without anything to support that upon which the charge was founded—such evidence there was none. Now he goes on to say:

"The prisoner Tilak was in Poona or its neighbourhood at the time, and knew perfectly well the state of feeling which existed. It, therefore, behoved him, as a man of influence and as leader of the people, at a time like that to be especially careful as to what he said in regard to the relations between Government and the people."

He appears now to go into the third person—he repeats:

"This was a most important point for the gentlemen of the jury to consider, for unless they bore in mind the particular conjuncture at which these articles were published, they would not arrive at the truth in this enquiry. They must have regard to the time, manner, connexion, and above all, the class of readers to whom the articles were addressed. Coming to deal with the first of the articles complained of, that called 'Shivaji's Utterances,' the learned judge said

that he would put before them to the best of his ability the interpretation put on the articles by the Advocate General, and also try to put before them the arguments for the defence. The Crown said the object was to draw the sharpest possible contrast between India as it was in Shivaji's time, and India under the British Government, to the greatest possible disadvantage of the latter. It alleged that under Shivaji every sort of blessing prevailed of virtue and courage, the Brahmins were protected, cows were protected, and everything was done which a Hindu or Mahratta would wish to be done. The idea is: 'look on this picture and on that.' It held up to admiration and gratitude the condition of the country in Shivaji's time, and then represented him as asking what was the result of all he had done now the British Government was in power? Under the British Government it is ruined, and not only ruined, but the particulars of the ruin are set forth in such a way as to incite the utmost possible prejudice, race prejudice, religious prejudice, every kind of prejudice against the British Government; that was in a concentrated form, the case for the prosecution."

In reference to that it will be proved that the evidence in the course of the case was not new or original matter; the substance and many passages had appeared before in poems in the Mahratta language and was freely circulated throughout the country and some of which were in the books taught in the schools.

In reply to Lord Davey,

Mr. Asquith said that a good many of these phrases were the references to the cow. They certainly appeared in the school books. Having stated that that was the case for the prosecution, the learned judge went on to say,

"in the first place that the article was a poem, and they must not too rigidly construe poetic expressions. The object of the poet was not to run down the British Government or incite any enmity to it, but merely to seek the improvement of the people, to point out what were the blessings under the rule of Shivaji, and to show how they had fallen from their high estate. The suggestion to the people was to seek to remove the grievances which had accumulated by representation to the proper authorities."

He goes on to say:

"In reference to the words, 'foreigners are dragging Luxshmi by the hand by means of persecution' a great deal of dispute had arisen, as to whether the last word was properly rendered 'persecution' or whether it meant 'harassing.' He did not think it made very much difference which word they took, and he advised the jury if there was any doubt in their minds to give the prisoners the benefit of it, by accepting the translation as harassing. In any case it meant that the wealth of the country was being taken from it. Mr. Pugh had contended that the writer was only complaining of the taxation of the country, and was saying no more than a great many newspapers, when they criticised extravagance in connexion with military expenditure, and so forth. He would point out, however, that no particular measure was referred to, and the charge was brought against Government, that in this time of scarcity, famine, and distress they were taking wealth out of the country. There was no objection to newspapers writing articles upon the expenditure of the country, when the object of the writer was to obtain some measure of financial reform, but they must take this reference to taxation in connexion with everything that followed, and also with the fact that no particular taxation was referred to. They must take it in connexion with all the other topics and references in the article in order to judge of the object of the writer in introducing it."

He goes on to read the passage about the middle of page 162:

"Shivaji, said the writer, protected the Brahmins, now-a-days they are imprisoned. What does this mean? The Advocate-General has put in evidence the article in the *Kesari* of 1894, dealing with an incident which happened in the town of Wai, when certain Brahmins were sent to prison after a criminal prosecution. There was disturbance at Wai in connexion with some Muhammadan mosque and music played by Hindu processionists. I do not know the details. At any rate there had been some disturbance, and a prosecution was instituted, in which the magistrate or judge who tried the case came to a decision adverse to the Brahmins and punished them. Mr. Pugh said there was no suggestion in this passage, as put forward by the prosecution, that Brahmins should be above the law, and not sent to prison, but that it was perfectly legitimate for any person to criticise the decision of a court of justice, and to say in an article in a paper that any particular sentence is wrong. This also is perfectly true; but here again the whole question is whether this statement appears in this list of items of desolation in such a way that you can reasonably compare it with the articles with which Mr. Pugh deals. The statement is that Shivaji protected the Brahmins, and that under the present regime they are persecuted and put in prison. It is for you to consider whether what is there contained is not an objection to the imprisonment of all Brahmins as such, and holding it up as a grievance to Hindus, that during the time of Shivaji Brahmins were protected and under the British Government they were imprisoned. What can be the object of putting that in a string with all these other topics? If this was made the subject of a separate article, without all these accompanying items, and being lumped up with this tale of desolation, which is contrasted with what prevailed under native rule, there would be a great deal of force in the contention of Mr. Pugh, but when it was mixed up with the other grievances of foreigners taking away the wealth of the country, you must consider with what object it was done. Why was this extremely delicate and inflammatory topic, with others equally inflammatory, disseminated at this particular moment? You must consider these articles as a whole, and ask yourselves whether the publisher or the writer must not have known that any ordinary Hindu or Mahratta would naturally have a strong feeling against a Government which had imprisoned the Brahmins."

I do not think I need read the next passage about the sacred cow. He goes on:

"Here, again, it is perfectly true that the law will never interfere with any man who writes articles to say that cows ought to be protected. It has often been done, and English people have written to the same effect, that having regard to the feelings and sentiments of the Hindu about the cow, it ought to be taken into account by the Government, so as to prohibit its slaughter altogether. Can you say, however, that this is a point which has been argued here? Has it been argued, or has it been strung upon a string of similar topics in such a way as not to appeal to the reason but to the passions of the people whose passions were then inflamed upon that as upon a number of other things. What connexion is there between the preservation of the sacred cow and the unjust acquittal of the British soldiers charged with offences against natives, except that both are subjects upon which enmity can very easily be aroused against the British Government? That is what you have got to ask yourselves. Of course, if you can find any other object in connexion with all those things together and the particular circumstances with which you have to deal, you must prefer it to any criminal object unless you have no doubt upon the matter. At the present time nothing suggests itself to my mind as to why all these topics of prejudice were accumulated at that particular moment. I do not see any discussion at all. The following sentences appealed to the feelings and sentiments of quite another class. They are three in number, and all are inserted in inverted commas. They are: 'He himself came running exactly within the line of fire of my gun. I thought him to be a bear.' 'Their spleens are daily enlarged.' 'How do the white men escape by urging those meaningless pleas?' These are references to those unfortunate cases, which, as everyone knows, occur from time to time in which an Englishman, generally a British soldier, is tried for murder or an assault on a native—cases in which the defence is that the whole thing was an accident and a slight blow only was intended, but, owing to some disease of the spleen, the consequence had been fatal, and the sentence: 'He himself came running within the line of fire of my gun,' has been referred to by the Advocate-General, who put in an article from the *Kesari*, which explains what that reference means. It seems that a gentleman named Fagan, who was out shooting some years back, fired at a woman who was one of the beaters, crouching amongst the bushes, and killed her, and his plea that the whole matter was an accident was accepted. The article in

question said that although this was done by a mistake, still this was a mistake which ought not to have been made, and that under a certain section of the Penal Code, this was an offence which could have been punished by two years' imprisonment. Mr. Pugh said this is a subject which is discussed every day, and the words in the incriminated article are: 'This great injustice seems to prevail in these days in the tribunals of justice.' It is quite permissible to comment on the proceedings of a court of justice, and to say that foreigners are acquitted who ought not to have been acquitted, and a writer can say this with perfect propriety without bringing himself within the terms of Section 124A. But you must look at the context. Why was this particular statement put in? There is nothing said in the way of criticism of a rash and negligent act as is dealt with in the *Kesari* article of 1894. This is put forward as one item in the general list which makes up the ruin of the country following upon the state of things Shivaji left behind him. You will take this as strung together with the other remarks upon imprisonment of the Brahmins and the slaughter of the sacred cow. Can you deal with this in the same way as if it had been made the subject of a separate article, and was written at the time when Hindus and natives generally were not in an inflamed and excited state? Must you not take it rather as forming part of the whole, and one of the parts which throws light upon the object of the writer in saying all these pleas are groundless and all these people escape?"

Then he comes next to the passage:

"Could any man have dared to cast an improper glance at the wife of another? A thousand sharp swords would have leapt out of the scabbards instantly. Now, however, opportunities are availed of in railway carriages, and women are dragged by the hand. You eunuchs, how do you brook this? Get that redressed."

Then he says something as to the meaning of the word "redress"—

"Whether it means redress by force or redress by a peaceful representation to a higher authority. The Oriental translator says to his mind, the word necessarily implies the use of force and excludes the idea of a peaceable representation, but Tilak, who was allowed to give his own representation, said exactly the opposite, and that the word would necessarily exclude the use of force. In Molesworth's Dictionary two meanings are given for the word; the first, 'complaint, representation;' the second, 'redress of grievances,' and nothing is said as to the way in which redress is to be obtained. I have another dictionary of the year 1829, in which it is suggested, in an obscure way that redress by *dada* was peaceful redress by way of some kind of constitutional representation. You have these two meanings given for the word and you must choose between them. The only test I can suggest is the one I suggested. Look at the context, and see whether it is probable the writer meant redress by force of arms, redress by one's own effort, or redress by means of a peaceable representation to the higher authorities. Now look at the end again, and see what the sense of it is. The question is one of insults to women, a delicate topic anywhere, and a delicate topic here, particularly at a time when this charge is made amongst the alleged grievances of the people of Poona, that women are insulted, or liable to be insulted, during the plague inspections. These words suggested that in the time of Shivaji, at these insults to women a thousand swords would have leapt out of their scabbards—in other words, that they would have been avenged by force—whereas now 'Opportunities are availed of in railway carriages,' and 'women are dragged by the hand.' Then follow the words 'you eunuchs,' or cowards. 'Get that redressed.' It has been contended on behalf of the defence to show that the real meaning is to make a representation to the superior authorities. But admitting that, why call them cowards and why refer to a thousand swords? 'You cowards, make a petition to the Government.'"

He speaks of redress by means of the sword. Is not that straining the words against the defendant far beyond what is fair. He says:

"Why does he call them cowards if that is all he wanted them to do. It does not require heroic courage to present a petition to Government."

Well, it may require a great deal of courage in a people who are not accustomed to what we call in this country constitutional action to make a representation to the police or the superior authorities.

Mr. COHEN: Read on to the top of page 165.

Mr. ASQUITH: I shall do so:—

"When you call a man a coward, and remind him that in days gone by, the way to avenge these insults was to draw the sword, is it likely you would mean that he should present a petition? Is it likely? You must bear in mind there is a real ambiguity in the word standing by itself, but in trying to arrive at what was meant, you must take it in connexion with all this talk about cowards, and the drawing of swords. All these things have to be considered, and considered with the greatest attention, in deciding the meaning of a word like this, and you have to consider whether it is reasonable or likely that when he says, 'you cowards, why do you let a woman be insulted? Get that redressed,' he means go to the Government with a complaint.'"

Then on page 166 he says:

"Does not this article draw a contrast between the time of Shivaji, when the people were happy, the Brahmins protected, and the cow regarded as sacred, where as under British rule the Brahmins were imprisoned, the cow allowed to be slaughtered, and the native princes had their independence interfered with under frivolous pretexts? Mr. Pugh had suggested that in this last paragraph a suggestion was made that these things ought to be put right by a petition to Government or a representation of some kind, but he did not see anything which necessarily referred to a petition by the people. This was a message from Shivaji to the British Government, and as he reminded the English of the benefits they received from him, the allusion was placed beyond doubt. Now, he had gone through the whole article, and the jury had to see what the writer was driving at in accumulating all these items of grievances which he called the ruin and desolation of the land. Was it, he asked, his object to show that the British Government ought to be hated, and that he wished his readers to hate it? If these things were calculated to make the British Government hateful, the jury might take it the writer meant to make the Government hateful. The jury would remember, too, that at this time there was the feeling about the plague, the examination of the houses, the soldiers' visits, and the allegations as to the treatment of the women, and this article was sent forth amongst the Hindus and Mahrattas in which were compiled in one concentrated form all things which, of late years, had been known to create bad feelings between the British Government and natives. It was for the jury to consider whether the publisher of this paper meant to say plainly to the people that Shivaji made the people happy, whilst the British Government failed in its duty to make them happy; that Shivaji protected the sacred cow, whilst the British Government allowed it to be slaughtered; that Shivaji protected the Brahmins, whilst the British Government allowed them to be put in prison; that under Shivaji the honour of women was protected, whilst under the British women are assaulted in railway carriages; and that Shivaji was a native ruler, whilst under the British native princes are deprived of their powers upon frivolous pretexts."

That finishes what he has to say about the poem. Then, as to the report of the meeting, there again, at page 167, he says:—

"You have to consider the state of mind in which the people to whom they were addressed were placed at Poona, how their feelings were towards the Government, and how their minds were turned with the existing state of plague, and how these articles, according to the view of others would affect the people."

Then he gives a description of Professor Bhanu's speech, and says:

"At the conclusion of the speech Professor Bhanu said: 'Every Mahratta, every Hindu, to whatever party he may belong, must rejoice at this (Shivaji) festival. We have to strive to gain our lost independence, and this terrible load is to be uplifted by us all in combination.' There has been much dispute about the word *Swatantrya.* 'Liberty' is applied in all sorts of sense in English. It may according to the context mean some kind or other of liberty. In connexion with this sentence the translation of the word is

liberty or independence: independence is natural or political liberty. Then there are the words: 'This terrible load is to be lifted by us all in combination. It is difficult to realise what the load means, except that it means a task of regaining liberty. Then it was said 'it will be never proper to place obstacles in the way of any person who tried to uplift the terrible load by any mode he chose. Choose your own mode; let other people follow theirs.' That means that we should not set ourselves up to judge persons who are trying to follow their own views. It was perhaps even stronger than that, for it advised no interference, as was shown in the next remark: 'Our mutual dissensions impede our progress greatly.' I suppose that must be read in combination with what had gone before, and must be intended to mean the regaining of lost independence.

It is quite obvious from the evidence given and from the tone not only of this gentleman's speech, but the speech of Mr. Tilak that the "mutual dissensions" to which reference was made were the party divisions in Poona itself. Professor Bhanu and Mr. Tilak were saying "Here is an occasion which comes once or twice a year, and though we are ordinarily at odds with one another let us be united in something in which we all have a share." Then Professor Bhanu proceeds: "All occasions like the present festival which tend to unite the whole country must be welcome." Then the learned judge says: "There you will see that all dissensions are advised to be put aside." Then the judge quotes the rest of the speech. Then at page 169 he says:

"The people who took part in the French Revolution denied that they had committed murders, and maintained that they were only removing thorns from their path. Why should not the same principle of argument be made applicable to the Maharashtra? You must take into account the way in which the accused dodges about from present to past, and past to present."

Well, I think you must take it in discussing this matter they are trying to see whether a historical parallel exists, and whether Shri Shivaji was justified in what is called assassination, when similar acts were justified during the French Revolution. Then the learned judge goes on:

"He had also suggested that Shri Shivaji was no more deserving of blame than Napoleon for killing people. I think it, however, only fair to tell you to bear in mind that this article only purports to be a report of the proceedings of a meeting, and must have been a good deal condensed. The word 'afterwards' may have been intended to denote the lapse of a considerable period, and that the rapid transition from Shivaji to Napoleon may thereby be not so significant as it appears in the article. The allusions to Shri Shivaji and Napoleon, and the killing of people in the French Revolution, might have been justified, but why should he allude to the present time and the Maharashtra?" Then the article continues: "It is true that we must swallow down our opinions on any occasion when an expression of them might be thought detrimental to the interests of the country, but no one should permit his real opinions to be permanently trodden under foot! Professor Jiniswale concluded his speech by expressing the hope that next year there would be 'witnessed greater unity amongst the various parties in Poona on the occasion of the festival.' You have got the document before you, and I advise you to read the whole of the paragraphs again. I cannot say more about it than I have done, except that it is for you to say whether it does not strike you that the construction put on the words by the translator is correct in regard to all the talking about lost independence. Take the whole passage containing the reference to 'striving to regain our lost independence,' and say if you think it is a peaceful sentence. If you think so, you can believe the defence, but you must also consider whether there is not a good deal of significance in the allusion to lost independence. It is for you to say whether you think these expressions cannot be taken as meaning an intention to excite the feelings of the people. Counsel on both sides have dealt with the matter, and I now leave it entirely to you to deal with it, and in doing so to consider the time it was used and the feelings of the people to whom it was addressed. You have to consider the whole article, and whether he was justified in seeking greater political power for Hindus from the British Government."

That is a clear implication in that sentence, that if the jury should come to the conclusion that the object of this speech or article was to suggest to the Hindus that they ought to have greater political power in British territory, that would come within the meaning of the section, and would justify, or do a great deal more than justify, such a person being found guilty of inciting people to disaffection. Now, as to the speech of Mr. Tilak himself, on page 170. There the report of the judgment proceeds:

"Asking them to also consider that sentence with the others, his lordship alluded to the following passage: 'With benevolent intention he murdered Afzul Khan for the good of others. If thieves enter our house and we have not sufficient strength in our wrists to drive them out, we should, without hesitation, shut them up and burn them alive.' In regard to that sentence, it might be taken as a justification to people unable to resist the inroad of the thieves to burn them alive, and might have reference to a resemblance of the Government. The jury must, in considering the article, take into consideration Tilak's remarks about the French Revolution, about the entering into the houses, and his remarks about Afzul Khan and the justification of Shivaji, and all the rest of it, and taking them in conjunction with the context, you are to make up your mind whether the accused meant only that 'the people should unite to improve the people and to share in the administration of the British rule,' or that he meant that the British rule was a terrible burden, and that extreme measures should be resorted to for the accomplishment of that object."

And then at the bottom of the page he says:

"We next come to the sentence, 'the Mahárájá strove to drive them away from the land of his birth. He did not thereby commit the sin of coveting what belonged to others.' Here again was the justification for a driving out of the British. Then we come to the sentence, 'Do not circumscribe your vision like a frog in a well; get out of the Penal Code.' Before going into this matter I would like to refer to the reference of the *mlenchas* made by Tilak. He referred to the French Revolution, and in that way strove to justify the killing of Afzul Khan by Shivaji, or in other words, attempted to justify political assassination. Now, with regard to getting out of the Penal Code, he advised his readers to leave out of consideration the four corners binding the Code, and like great men get into the higher atmosphere of 'Shrimat Bhagwd Gita.'"

Here again it is a grievously unfair construction to suggest on the words used on the occasion, for as your lordships will remember, the whole point of Mr. Tilak's speech is this: The question raised here and much controverted is as to whether this great man, Shivaji, whom we all recognise as our national hero, was guilty of an act of assassination. While I am one of those who think a different standard of morality ought to be applied when judging the actions of great men and others, I am not one of those who think a different standard should be applied for you and me, and for men who are like us. When you speak of an opponent as one of these great geniuses and heroes of history you must take a wider view, you must get out of the atmosphere of the Penal Code. That may be a good or bad argument, but it cannot possibly be twisted into an invitation to the persons to whom it was addressed themselves to violate the provisions of the Penal Code, or to justify them in an act of assassination. To say the exact reverse would be a much fairer construction. The learned judge proceeds:

"Later on there was the sentence, 'A country which cannot unite even on a few occasions should never hope to prosper.' Here you have the exhortation that where an action was for the good of the community, that Hindus like Professor Bhanu, who is a reformer, should be willing to unite with the orthodox party and sink their differences for the common good. Here was a distinct appeal that, however much they may be disunited during the 365 days of the year, that on one day at least and on one subject they should be united. You are to decide whether by this was meant simply to unite for the purpose of improving the condition of the people, so that they might ultimately take a larger share in the administration of the country, or whether it was to unite to get rid of the terrible burden of British rule, and not to be too particular about adopting extreme measures to that end."

That suggestion is wholly unwarranted by the language of

Mr. Tilak himself. What they were doing was, on the one day out of the 365, to indulge in a sentiment which they had in common—in a sentiment in memory of Shivaji, and for the purpose of that celebration to discuss their own past and their present condition, although they differed on every other subject in heaven; and then the learned judge said they were to decide whether they were to unite "to get rid of the terrible burden of British rule and not to be too particular about adopting extreme measures to that end," although there is no colour in the article itself for it. The learned judge finishes there his citations. What was the state of things among the people to whom the article was addressed? My grievance is that the learned judge assumed the existence in Poona at the date these articles were published of facts of which there was no evidence whatever. He says on page 171:

"First of all I propose to deal with the articles put in by the defence in respect of the plague. The first set covers a period from February 16 to April 4, and it shows that Tilak was sincerely anxious to get rid of the plague. He co-operated with the Government, and did all in his power to get his co-religionists to accept the regulations of Government. That, as Mr. Pugh said, was very excellent work. It is also in evidence that on March 8, he submitted a memorandum to Government embodying certain suggestions in connexion with the plague which was formally acknowledged by the private secretary to Lord Sandhurst. You have not that memorandum before you, but some indication of it has been given by Mr. Pugh in connexion with something which appeared in the *Maharatha*. I had no doubt that the suggestions were very good ones, and though during this period there was some criticism of the Government measures appearing between February 16 and April 4 in the *Kesari*, this did not overstep the bounds of legitimate criticism. On May 4, however, an article of quite another character appeared. It was in connexion with the plague, and showed that Tilak's opinions had, for some unknown reasons, undergone considerable change. In it there was a complaint against the British soldiery; they were charged with committing all sorts of excesses, with insulting women and committing thefts. He said the people were discontented, and there seemed to be a deliberate intention to impute to Government that they were oppressing the people. You will bear in mind that this was nearer the date of publication of the incriminating articles which were published on June 15."

It is quite true that there were two articles on pages 42 and 45, one a letter and the other an article making certain criticisms of a severe kind on some of the measures in relation to stamping out the plague, but no one would say that that was anything more than an article which could be described as proper criticism in the exercise of that right which every journalist possesses. The articles which appeared in the *Kesari* on May 18, under the heading "Editorial Notes," shows the state of things a month before the incriminating articles were published. "Elsewhere is published a notice signed by Mr. Rand, and promulgated in the city, which states that the plague in Poona has now almost subsided, and that the inspection by (British) soldiers will be discontinued from the 20th instant." The soldiers had been removed as far back as May 18, and he ought to have called the attention of the jury to that. Instead of that,

"You will bear in mind," he says, "that this was nearer the date of publication of the incriminating articles which were published on June 15; and it seems to me that Tilak's feelings at that time were the reverse of friendly."

He also says:

"But the desire to overthrow the Government at that particular time was perfectly immaterial. Moreover it is ridiculous to suppose that Tilak expected any personal benefit from attacking Government. It was hardly likely that in the year 1897 the whole of the executive machinery of the Government could disappear and a native agency be substituted in its place. May be, it was anticipated that, two or three hundred years hence, such a thing might happen, but it is foolish to suppose that Tilak would gain personally. But, on the other hand, it was not unreasonable to suppose that while disliking the Government and planning for their overthrow, he should have been co-operating with the Government and been generally anxious to get rid of the plague. He is a man of intelligence, and there is no doubt that he was willing for the time being to restrain any feelings that he may have had against the Government in uniting in a common cause. Probably he thought that the ends justify the means."

This is very inflammatory language and there is no evidence to show ulterior motives. Then he goes on:

"There was also an article dated May 18, 1897, regarding a deputation to Mr. Rand in connexion with the Hindu Plague Hospital, in which certain suggestions were made with regard to continuing it. But this hardly has any bearing upon the case."

Then he comes to the Jubilee articles and he says it does not make any difference one way or the other.

"Having read you all these articles and having called your attention to certain matters, I must tell you that you must divide them under two heads. First of all, you must remember the test to be applied is this, whether these people were trying to stir up a rebellion or feeling of enmity against the Government. Secondly, it is for you to consider the class of readers of the publication, and the state of feeling at the time the articles were published, and the natural effect which, according to their view, the articles of June 15 would have upon them at such a time. Now I just want you to consider what does and does not concern you. You have nothing to do with the conduct of the Government in this matter. It is a matter entirely for them to consider. All you have to consider is, whether the prisoners are guilty or not guilty. I have already spoken to you about the question of the trial at Poona. With regard to the telegrams supposed to have been sent home, we have no evidence to justify it, and there is also nothing to show when the articles were first sent for translation to the Oriental translator. We have it on record, however, that Tilak was returned to the Legislative Council on May 23, and that his election was accepted on June 24. With regard to when the translations were sent to Government we are entirely in the dark. Even Mr. Baig said he could not fix the date, and I would ask you, Gentlemen of the Jury, to give an impartial consideration to this case. Everyone of you must try to forget everything that you have heard or read in this case, and make up your minds without prejudice, to give a verdict on what has been put in evidence before you. You are to read the articles with the other evidence, and putting aside all prejudice, say if Tilak was trying to make his readers hate the Government, or was commenting on measures with a view to excite disapprobation compatible with a definite policy to support the Government."

That concludes the summing-up.

THE PETITIONER'S OBJECTION.

Now, my Lords, speaking generally, the objection which, on behalf of the Petitioner, I have to take to the direction given by the learned judge to the jury is this: that he has defined the offence described in Section 124A in terms far too wide, and that if the jury accepted the ruling of the learned judge as a conclusive and binding definition of the law, they may have found and, as I should submit in this case they have found, Mr. Tilak guilty of disaffection, when in point of fact the highest and strongest charge that could be fairly brought against him on the strength of the matter which was proved was that he had commented, or allowed other persons to use his paper as a vehicle for comment—severe comment, no doubt, upon what he conceived to be social and political abuses, but comment which is quite within the scope recognised in this country, and as hitherto recognised in British India, of the functions of a public journalist.

THE MEANING OF "DISAFFECTION."

The question really depends upon what is the meaning to be given to the word "disaffection" in Section 124A, having regard to the context and to the "Explanation." It is, of course, noteworthy that those who framed this section have not used the word—which is a "term of art" in English law—the word "sedition." One, I think, may fairly assume that they have distinctly abstained from the use of that word, the importation of which into this section would have allowed, when the section came to be construed, the resort to the numerous authorities, and not very consistent authorities, in English law as to what sedition means. At any rate, whatever their reason may have been, they have not used the

word "sedition" and they have chosen the word "disaffection," which is not a "term of art" at all, and which in this country and in our system of jurisprudence has no defined meaning. It is a popular word. The question is, what is meant in this context by a term the interpretation of which is in no sense covered by precedent or authority? I have quoted several passages from the summing-up of the learned judge, in which I think he lays it down clearly. I do not wish of course to pin him to the expression that disaffection means merely "the absence of affection." Nobody could say that that was an adequate, or anything but a very loose and vague, definition of the word. But I think I am not misrepresenting the general effect of the charge which he gave to the jury when I say he defined feelings of disaffection as meaning any feelings of hatred or ill-will or enmity to the Government, and that therefore if it could be shown that the intention or effect —for I agree the intention must be judged by the effect which language used is calculated to have upon the mind of an ordinary reader under the circumstances of the case—if it could be shown that the intention or effect of the words used would be to inspire among those to whom they were addressed feelings of enmity towards the Government as by law established, that was sufficient to bring the person within the scope of this penal enactment.

THE MEANING OF THE "EXPLANATION."

The learned judge fortifies himself in taking that large, and, as I submit, far too extensive, view of the meaning of the term by the "Explanation" which he treats as though it were what I submit it is not, and is not intended to be—an exhaustive enumeration put negatively of the cases which are not intended to fall within the section. That is not, as I submit, the proper function of an "Explanation," its object is that which one would expect it to be—not to say that everything of which this is not an illustration falls within the section, but to say, "here is an illustration which shows the sort of thing which ought not to be deemed to fall within the section." Now, what is the "Explanation?" "Such disapprobation of the measures of the Government as is compatible with a disposition to render obedience to the lawful authority of the Government, and to support the lawful authority of the Government against unlawful attempts to subvert or resist that authority is not disaffection; therefore," showing that it is dealing with an illustration—"the making of comments on the measures of the Government with the intention of exciting only this species of disapprobation is not an offence within this clause."

Lord HOBHOUSE: Do you say that the "Explanation" gives merely one illustration of what is not to be regarded as disaffection?

Mr. ASQUITH: Yes.

Lord HOBHOUSE: And the judge is taking it as the whole?

Mr. ASQUITH: As exhaustive. Let me show the light which this explanation legitimately throws upon the interpretation of the word disaffection in the preceding part of the section. Let me point out the injustice, and I think the manifest injustice, if I may say so without disrespect, almost the absurdity which follows from the way in which the learned judge has dealt with the explanation in this respect. He says: You will observe that the explanation speaks only of the measures of the Government, and therefore the making of comments on the measures of the Government is not an offence within this clause. He says: Look at the word "measures." What does that mean? It means that a journalist who criticises a particular Act—the imposition of a tax, or the passing of an Act dealing with epidemics or even a military expedition—anything that falls within the popular meaning of the word "measures," provided it is compatible with a disposition to render obedience, and who comments upon such measures, is safe; but the moment you get beyond measures and go to the general policy or structure of the Government, the moment (in other words) you get outside the region of particular Governmental acts and begin to deal with the spirit or general intention, or motive which characterises the Government policy as a whole, there you get out of the region of the legitimate, and you fall within the penal enactment of the clause itself. Surely that is a most irrational and impracticable construction, founded entirely upon the use of what, I submit, is an illustration only of the word measures, as supplying, no doubt, the most ordinary and common cases in which criticism by a public writer or speaker upon a Government is excited. As a rule people are talking about measures when they are talking about the Government, therefore, says the writer of the Explanation, "Such a disapprobation of the measures of the Government as is compatible with a disposition to render obedience to the lawful authority of the Government, and to support the lawful authority of the Government against unlawful attempts to subvert or resist that authority is not disaffection." The learned judge has treated that as though it meant the moment you got beyond a comment on specific and particular Acts, if your comment is hostile and if the object of your comment is to make the people to whom it is addressed share your feelings, that would fall within the scope of the penal part of the clause. Surely the real, the essential thing about the Explanation, that which gives it its real meaning and purpose, is not the use of the word "measures" but the words that follow. The criterion suggested here is not the subject matter criticised, but it is the purpose of the criticism. If your disapprobation—the disapprobation it is sought to excite by the words used is compatible with the "disposition to render obedience to the lawful authority of the Government"—then the person who seeks to engender that feeling in the minds of his readers is not a person who, within the meaning of the clause, is exciting feelings of disaffection. I say, therefore, going back to the word "disaffection" in the clause itself, and reading it by the light which is thrown upon it by the language of the Explanation, what was intended by the clause as a whole is this: that feelings of disaffection were intended to be something more than, and something beyond either disapproval or dislike. In the view of the framer of the section you find the dividing line between that which is lawful and unlawful, when the feeling which is sought to be excited is incompatible with the "disposition to render obedience to the lawful authority of the Government against unlawful attempts to subvert or resist that authority." In other words, I say it is intended to be made an ingredient, and an essential ingredient, of this offence that the object in the mind of the writer, and the effect calculated to be produced by what he has written in the mind of the reader, should be such a state of enmity or disapprobation, to use whatever neutral term you please, as is incompatible with the disposition to obey. In other words the essence of the offence is that you should be seeking to excite in the minds of those to whom your language is addressed an intention or disposition to resist the lawful authority of the Government. Sedition has sometimes, by learned judges in this country, been described as disloyalty in action. Although the framers of the Indian Penal Code have not (perhaps for good reasons) used the word sedition, yet what is intended here is that temper of the mind which, although it may not have the means or the opportunity at once to resort to measures of violence, is yet a temper of mind incompatible with what is called loyalty or obedience to the lawful authority of the Government. It may be that the object is to excite active resistance. Of course, then the case would be too clear for argument. It may be that the object is only to excite passive resistance. There, again, that would be not compatible with a disposition to render obedience to the lawful authority of the Government. But there must be, as we submit, in view of the impossibility otherwise of drawing any line which is either workable or fair between legitimate and illegitimate criticism—you must find as an essential ingredient in this offence, before any public speaker or writer can be convicted of it, that it was that sort of temper that he was seeking to produce in the minds of his hearers or readers. If that be so, the direction given by the learned judge to the jury was a misdirection, because over and over again he has told them it is quite sufficient for the purpose of bringing a man within this section that he should seek to inspire enmity, ill-will or hatred, or whatever you like to the Government, and the protection given by the "Explanation," only applies to criticisms of particular measures, and it is only then that you have to consider whether the disapprobation excited is compatible with the disposition to render obedience to the authority of the Government.

THE WORD "MEASURES."

Now, my Lords, as I have read the summing-up almost *in extenso*, and paused from time to time upon the passages where the learned judge has dealt with this matter, I will not go through them again in detail.

Lord HOBHOUSE: You say "measures of the Government"

ought to be read as if it were the whole course of Government.

Mr. ASQUITH: Yes; or rather that it is only an illustration—that inasmuch as criticism upon Government generally takes the form of criticism of some one or other of their measures, the word measures is not the governing word.

Lord DAVEY: You would include administrative acts I suppose—not merely legislative acts?

Mr. ASQUITH: Certainly.

Lord HOBHOUSE: You mean that it ought to be read as if it were disapprobation of the nature and course of Government.

Mr. ASQUITH: Yes.

Lord DAVEY: You say it is not meant to be exhaustive?

Lord HOBHOUSE: Suppose the man says Government is very wasteful, it is wasting the resources of the country, and it is neglecting irrigation and education, and a lot of other things, that would not be a comment on any particular measure?

Mr. ASQUITH: No.

Lord HOBHOUSE: You say that falls within the Explanation.

Mr. ASQUITH: Yes. I have a very good illustration in one of these articles here. Your lordships will remember the passage in which the writer says that the foreigner is driving wealth out of the country—vague words like that. That means of course, put in plain, prosaic English, and not in these somewhat rhetorical flights, that Indians are suffering from over-taxation, and a great deal of it goes to England to pay what are called the Home Charges. That is a general criticism. If you say the salt tax is a grievous burden and ought to be removed, or that the cotton duties are things which ought never to have been taken away, those would be "measures." The learned judge contends that as long as you are dealing with them it is all right, but the moment you make a charge which does not hit upon, or condescend to, any specific act of the Government, but which is, to use our language, an indictment of its policy as a whole, or of a particular policy, you are no longer within the cover of the protection intended to be given by this Explanation, and you fall within the penal portion of the section itself. I say that is a wrong way of construing the section altogether.

THE REAL CRITERION OF DISAFFECTION.

Having to define a word which is not a term of art like "disaffection," the first part of the section giving no clue to its meaning, but the Explanation being clearly intended to afford that clue, the learned judge ought to have observed that the real clue is to be found in those words, and the real criterion is: Is or is not the disapprobation, the spirit of hostility and ill-will which is sought to be engendered, compatible with the disposition to render obedience to the lawful authority of the Government? That is a question which I say he ought to have told the jury they must keep constantly in their minds, and so long as these speeches at the meeting, and this highly rhetorical poem were merely intended, or calculated, if they were so intended or calculated, as a general attack upon the policy of the British Government in India, or upon the change of social habits and institutions which had been brought about since the time of Shivaji, since the time when the Mahratta rule was founded, by the introduction of foreign laws and foreign customs; so long as that was all, could it be said that there was anything there which necessarily tended to engender a disposition not to render obedience to the lawful authority, and to resist that authority, or, at any rate, not to obey it, and should not he have said to them that that is the thing which they had to consider? This is a question for the jury, of course. I do not say that it is a case which ought to have been withheld from the jury. I am not going so far as that. But I say that is the question to which their minds ought to have been directed, and throughout this summing up it is never suggested to them with anything like clearness or precision.

THE ASSUMPTION OF EXASPERATION.

Well now, my Lords, I have already referred to the manner in which the learned judge deals in the course of his summing-up with particular passages in the articles in question. I am not going over the ground again, but I do submit that at various stages in his charge he in some cases assumed, without any evidence to warrant him in so doing, a state of inflamed feeling and of present exasperation in the minds of those to whom these articles were addressed, which, as he said to the jury, would justify them, and indeed almost required them, to put a more severe construction upon the language than if it had been used at another place and at another time. I say in some instances he did that, and I say in other cases—I have dwelt upon the particular passages in reading the summing-up—as for instance in his remark about the thousand swords leaping from their scabbards, and more particularly in his most warped, and as I submit, unreasonable comment on Mr. Tilak's speech about the Penal Code and about the comparison between Napoleon and Shivaji and the morality of ordinary men, and of great men—that in passages such as those the learned judge has strained and has suggested, as against the prisoner, to the jury a construction of the words used which those words would not legitimately bear.

NOT AN ORDINARY CASE.

My Lords, we are here upon an application which, of course, I am aware, though not altogether unusual, yet according to the decisions of your lordships requires very strong grounds to support it. It has been said that the mere ordinary case of misdirection of a jury would not justify this Committee in advising Her Majesty to exercise this special prerogative. I ought to mention—I am not sure whether I did—that an application was made to the High Court in Bombay on the part of the petitioner for leave to appeal, and that application was refused, I think by the Chief Justice and two other judges. But, my lords, I have to submit to your Lordships that this is not an ordinary case.

Lord HOBHOUSE: Has the High Court complete discretion in allowing an appeal in a criminal case?

Mr. ASQUITH: It has, under the Letters Patent.

Sir RICHARD COUCH: It is under the terms of the Charter.

Mr. MAYNE: It is in the Letters Patent, Section 41, appointing the High Courts.

Lord DAVEY: Could the High Court give leave to appeal in a criminal case to this Board?

Mr. ASQUITH: Yes, under that section it could.

Sir RICHARD COUCH: It is a matter in their discretion.

Mr. ASQUITH: I believe entirely.

Lord DAVEY: Could they entertain it themselves?

Mr. ASQUITH: No, my lord. I am told they could not have heard the case themselves. They can only give leave to appeal, unless the judge reserved a point; which, of course, he did not do, or I am told unless the Advocate General certifies that it is a case that ought to be re-heard, but those are the only two ways.

Lord HOBHOUSE: What are the reasons for refusing?

Mr. ASQUITH: I am afraid I have not got a Report. It was September 24.

Lord DAVEY: It is at page 177.

Mr. ASQUITH: That is only the decision. I have here the judgment which was given by the Chief Justice. It was apparently about September 20. Only the formal order is in the book, and I am reading now from the print which has been furnished me. This gives the reason.

"The Chief Justice in giving the decision of the Court said:—The question we have to determine in this case is, whether, in the opinion of the Court, it is a fit case for appeal to Her Majesty in Council. In reference to that it must be remembered that the Privy Council have themselves laid down certain rules which guide them in considering whether appeals in criminal cases are fit cases for appeal or not; and that they have expressly decided that there is no general appeal in criminal cases; it is only when an important or doubtful question of law arises, or when there has been a miscarriage of justice. I think this will include nearly all cases—I exclude the question of absence of jurisdiction—in which appeals have been allowed by the Privy Council. Therefore, we have to apply our minds to consider whether, in this case, there is an important question of law, or whether there has been any want of jurisdiction shown by the Committing Magistrate or the High Court. As to the question of jurisdiction we are all of opinion, without doubt, that this prosecution was instituted under the authority of Government, and that, to use the words of the present Code, 'this complaint was made by the order or under the

authority of Government.' There is no special mode laid down in the Code whereby the order or the sanction of the Government is to be conveyed. In this case the prosecution was conducted by the Government solicitor, instituted by the Oriental translator to Government, and he produced the written order of Government to institute the complaint. Now, although the complaint must contain, undoubtedly, the written order—if written order is required—there is nothing in the Code to show that it must specify the exact article in respect of which the complaint is made. On that point it would be puerile to send the case before another tribunal. The other ground upon which Mr. Russell has asked us to certify that it is a fit case to send to the Council, is that there has been misdirection, and he based his argument on one major and two minor grounds. The major ground is that the section cannot be said to have been contravened unless there is a direct incitement to stir up disorder or rebellion; that appears to us to be going much beyond the words of the section, and we need say no more upon that ground. The first of the minor points is that Mr. Justice Strachey, in summing up his case to the jury stated that disaffection meant the absence of affection, but although, if that phrase had stood alone, it might have misled the jury, yet taken in connexion with the context, we think that it is impossible that the jury can have been misled by it. That expression is used in connexion with the law as laid down by Sir Comer Petheram, in Calcutta, in the *Bangobasi* case. There Sir Comer Petheram, instead of using the words 'absence of affection,' said 'contrary to affection,' and if the words 'contrary to affection' had been used instead of 'absence of affection' in this case, there can be no doubt that the summing up would have been absolutely correct. Taken in connexion with the context, it is clear that by absence of affection, the judge did not mean the negation of affection, but some active sentiment on the other side. Upon that point we cannot certify that this is a fit case for appeal. In this connexion it must be remembered that it has not been alleged that there was a miscarriage of justice. The last point is in reference to the definition of the word 'Government.' It is a very minor point, but striking out the words which were not in the original words Mr. Russell has alluded to, we cannot see that there has been any misdirection as to the meaning of the word 'Government.' We therefore think the application must be refused."

I do not know what that point was.

Lord Hobhouse: They do not take the point you have been observing upon as to the confinement to a particular measure.

Mr. Asquith: No; nor as to the construction of the Explanation and the proper function of the Explanation.

Lord Hobhouse: That is what I mean—confining the Explanation to specific measures. That is what you complain of now.

Mr. Asquith: Yes; as regards the general question whether the case—assuming that I have made good my point that there was a substantial misdirection on the part of the learned judge—is one in which your lordships will give leave to appeal, I am aware that the matter is one which is entirely within your lordships' discretion. I would rather put what was said in the case, which, I think, is almost always cited, *The Queen v. Bertrand*, in the judgment of Sir John Coleridge, which is in the Law Reports, I Privy Council, page 530, in which his lordship says:

> "The exercise of this prerogative is to be regulated by a consideration of circumstances and consequences; and interference by Her Majesty in Council in criminal cases is likely, in so many instances, to lead to mischief and inconvenience that in them the Crown will be very slow to entertain an appeal by its officers on behalf of itself or by individuals. The instances of such appeals being entertained are therefore very rare. The result is that any application to be allowed to appeal in a criminal case comes to this Committee labouring under a great preliminary difficulty—a difficulty not always overcome by the mere suggestion of hardship in the circumstances of the case, yet the difficulty is not invincible. It is not necessary, and perhaps it would not be wise, to attempt to point out all the grounds which may be available for the purpose; but it may safely be said, that when the suggestions, if true, raise questions of great and general importance, and likely to occur often, and also where, if true, they show the due and orderly administration of the law interrupted, or diverted into a new course, which might create a precedent for the future; and also where there is no other means of preventing these consequences, then it will be proper for this Committee to entertain an appeal, if referred to it for its decision."

I claim that this case does fall within the criteria there laid down. I believe that with the exception of the decision which has been referred to of Sir Comer Petheram, this is the first time that this section in the Penal Code has come under judicial consideration at all. If there is no appeal from the construction which has now been put upon the section by the learned judge of the Court below, that of course will have to be a guide and form a precedent when the law is again invoked, and as the whole law which regulates the rights and liabilities not only of journalists but of speakers throughout British India depends on whether or not this is the true construction of the section it is certainly, I submit, within the words of this case "a question of great and general importance, and likely to occur often"; and also a case which may and must "create a precedent for the future." Under these circumstances I should submit to your Lordships that this is a fit case for granting the leave which the petitioner asks.

Lord Hobhouse: Do you appear for the Secretary of State, Mr. Cohen?

Mr. Cohen: Yes. I do not know that I ought to say anything.

The Lord Chancellor: Mr. Cohen, I suppose, is only to watch and hear.

Mr. Cohen: Perhaps I may just direct attention to the last case that was before this Board in which the rule on which the Board proceeds is laid down. I think the judgment was delivered by the Lord Chancellor on July 14, 1897. He says the rule is accurately stated as follows in a case to which their Lordships referred in the course of the argument *re Abraham Mallory Dillet*, where they say:

> "Her Majesty will not review or interfere with the course of criminal proceedings unless it is shown that by a disregard of the forms of legal process, or by some violation of the principles of natural justice or otherwise, substantial and grave injustice has been done."

I do not wish on the part of the Government to do more than just to remind your lordships of the principle there laid down.

Lord Davey: You do not argue the case?

Mr. Cohen: No; I do not think I ought to argue it at this stage.

Counsel were directed to withdraw and their lordships deliberated. After a brief interval Counsel were re-admitted.

The Lord Chancellor: Their lordships are of opinion, taking the view of the whole of the summing-up, which is of very great length, that there is nothing in that summing-up which, in their lordships' opinion, calls upon them to indicate any dissent from, or necessity to correct what is therein contained—looking at the summing-up as a whole, and looking at each part of what was said by the light of what else was said. Speaking generally of the argument which has been presented to their lordships, they are of opinion that no case has been made out consistently with the rules by which their advice to Her Majesty has been hitherto guided in giving leave to appeal in criminal cases; and, therefore, they will humbly advise Her Majesty that this is not a case in which leave should be granted.

SOME OPINIONS OF THE PRESS.

The *Daily Chronicle*, of November 19, contained the following leading article:—

We have not yet heard the last of Lord G. Hamilton's Poona policy. To-day the Judicial Committee of the Privy Council will hear an application by Mr. Asquith for special leave to appeal in the case of Mr. Tilak. A couple of months ago the High Court of Bombay refused to grant a petition for appeal, but the refusal had no effect, as the petition need not have been made. There are, it would seem, two things which the Privy Council can do if it thinks fit. It can decide that Mr. Justice Strachey's summing-up, which provoked some strong comments even from the *Standard*, amounted to such a misdirection of the jury as to deprive their verdict of any value. Or, without going so far as that, it can take steps to modify the sentence of eighteen months' rigorous imprisonment which was passed upon Mr. Tilak. Rigorous imprisonment in India is a far more severe punishment than the hard labour of our own penal system, and for an offence which was admittedly political it seems a strong measure. But the chief point in the case is the new and remarkable interpretation which the judge gave to the law. Section 124A of the Indian Penal Code, under which Mr. Tilak was tried for seditious incitement, is directed against attempts to "excite feelings of disaffection to the Government." But an important "Explanation" to the section adds that "such a disapprobation of the measures of the Government as is compatible with a disposition to render obedience to the lawful authority of the Government is not disaffection." It is not too much to say that Mr. Justice Strachey's summing-up, which some of us thought must have been misreported in the telegrams, but which proves to have been reported with perfect accuracy, reduced this "Explanation" to a mere nullity. Mr. Justice Strachey insisted upon a distinction between "the measures of the Government" and "the Government itself." He treated the "Explanation" as an "exception." He interpreted disaffection as "want of affection." And he held that "feelings of ill-will, great or small, intense or mild, and any attempt to excite such feelings, bring the offender within the section." The net result of this interpretation of the law, if it is permitted to stand, will be to render criticism in India impossible except in terms of approval. There are those, no doubt, who, on political grounds, would regard that as a desirable consummation. But the Judicial Committee of the Privy Council consists of lawyers whose business it is to interpret the law. It may, of course, be held that the verdict was just and proper in spite of the summing-up. But it is well to remember that Mr. Tilak's jury consisted of six Europeans and three Indians, and the verdict was the verdict of a majority. More than that, the articles in respect of which the prosecution was instituted were written in Mahratta, which the European jurymen, unlike their Indian colleagues, did not themselves understand. In these circumstances the proceedings of to-day will be awaited with an interest in proportion to their extreme importance.

The following leading article appeared in the *Daily Chronicle* of November 20:—

The application to the Judicial Committee of the Privy Council for special leave to appeal in the case of Mr. Tilak came to a somewhat startling conclusion yesterday. Nobody, we fancy, would have been greatly surprised if the Court had held, as Mr. Cohen, the council for the India Office, suggested, that the case was not of a kind in which the Privy Council could, according to custom, be expected to interfere. Nor, perhaps, would very many people have demurred if the Judicial Committee had expressed the view that, while Mr. Justice Strachey's interpretation of the law was unsound, the verdict and sentence upon Mr. Tilak were substantially just. But, as it is, the Judicial Committee adopted neither of these courses. The Lord Chancellor, Lord Hobhouse, Lord Davey, and Sir Richard Couch heard Mr. Asquith's luminous and vigorous speech, and considered his trenchant criticism of Mr. Justice Strachey's law. Yet the Lord Chancellor, in announcing the decision of the Committee, not only refused to grant the application, but actually went out of his way to declare that in the judge's summing up, regarded as a whole, there was nothing which called for dissent. If this latter opinion is merely the Lord Chancellor's own, perhaps it does not greatly matter, especially as it was not accompanied by a statement of reasons. But if it is shared by lawyers like Lord Hobhouse and Lord Davey, the exact position in which the case leaves Section 124A of the Indian Penal Code is worth examining. This section, as we pointed out yesterday, is directed against attempts to "excite feelings of disaffection to the Government." But the "explanation" appended to the section provides that "such a disapprobation of the measures of the Government as is *compatible with a disposition to render obedience to the lawful authority of the Government* is not disaffection." The important words here are surely those which we have italicised. In other words the distinguishing marks of criminal disaffection and legitimate disapprobation are that the latter is, and the former is not, compatible with overt obedience to law. To put the same thing in another way, disaffection involves, while disapprobation does not involve, disloyalty in act. In a case tried under Section 124A of the Indian Penal Code, Mr. Asquith contends—and it is hard to see where the contention is wrong—that one of the primary duties of the judge is to impress upon the jury the nature and the vital importance of this criterion. Mr. Justice Strachey, however, did nothing of the kind in the Tilak case. On the contrary, the part of the "Explanation" which *he* appears to have italicised is merely the one word "measures." This, he held, means simply legislative enactments, and the "Explanation" is to be treated as an "exception." That is to say, according to Mr. Justice Strachey's interpretation of Section and Explanation combined, one may legitimately denounce with as much ferocity as one pleases any particular enactment of the Government of India, but so soon as one passes from the enactments to "the Government itself" one becomes guilty of the crime of disaffection. But what is "the Government itself"? Would the phrase, as Mr. Bonnerjee pertinently asks, include a policeman on his beat? Would any adverse criticism of *him* be criminal? To the lay mind the interpretation seems merely grotesque, and the more useful as well as more rational interpretation of the law would appear to be that the determining consideration is not the subject-matter of one's criticism, but the nature and temper of the criticism itself. One would like to know precisely how far, and in what particlurs, Lord Hobhouse and Lord Davey agree with Mr. Justice Strachey's construction of the law. Mr. Asquith described it yesterday as most irrational, manifestly unjust, and grievously unfair. But the decision of the Judicial Committee lends it new authority. If the decision is to stand it becomes, apparently, the law in India that disaffection is "the absence of affection," and that "ill-will of any sort towards the Government—feelings of ill-will, great or small, intense or mild," render a man liable to imprisonment. The genesis of the dictum that disaffection means "the absence of affection" is, by the way rather interesting. Mr. Justice Strachey said that the phrase was Sir Comer Petheram's. But what Sir Comer Petheram said was that disaffection was "the contrary of affection." With which description, one wonders, does the Lord Chancellor agree? But it is the attitude of Lord Hobhouse and Lord Davey that puzzles us, for it seems to mean either (1) that the law must forthwith be altered, or (2) that henceforward newspapers published in India must never write criticism except in terms of downright approval.

The *Manchester Guardian* (November 20) wrote, under date "London, Friday night":—

The Judicial Committee heard to-day and refused the application of Mr. Bal Gangadhar Tilak for special leave to appeal from the decision of the High Court of Bombay by which on September 14 last he was sentenced to eighteen months' rigorous imprisonment. The appeal was heard in the little Court in Downing Street, where one could not but contrast the magnitude of the issue which was to be determined with the commonplace atmosphere and informality of the tribunal. It was as if half-a-dozen pleasant old gentlemen should settle the affairs of an empire in a couple of hours' conversation round a dining table. Four Privy Councillors constituted the Court—the Lord Chancellor, Lord Hobhouse, Lord Davey, and Sir Richard Couch. The Lord Chancellor does not often take part in the proceedings of the Judicial Committee, and he seemed to-day to find them less absorbing than his private correspondence. But there was no lack of directness in the vigorous little speech in which, at the close of the hearing, he

announced not only that the application could not be granted, but also that from Mr. Justice Strachey's summing-up, considered as a whole, the Court did not dissent. The counsel for Mr. Tilak were Mr. Asquith, Mr. W. C. Bonnerjee, and Mr. G. A. Blair. The Secretary of State for India was represented by Mr. Cohen and Mr. Branson. But the only considerable speech was Mr. Asquith's, which lasted precisely two hours. The orthodox style of speaking before the Judicial Committee is conversational. A marked and ominous feature of to-day's hearing was that, contrary to custom, the Court showed very little disposition to join in the conversation. Lord Hobhouse, it is true, who throughout industriously annotated the margin of his Bombay report, occasionally put a question to Mr. Asquith. Lord Davey and Sir Richard Couch intervened once or twice. But, save for these very rare interruptions, Mr. Asquith was allowed to proceed smoothly and quietly to the end. His speech, it is not too much to say, was one of those masterpieces of luminous condensation and incisive statement which explain, as they justify, his rapid success in the field of politics. Vigour of tone would, no doubt, have been out of place. But there was sometimes a suspicion of feeling and even a ring of indignation in his voice, notably when he spoke of the "manifest injustice, amounting almost to absurdity," of the judge's construction of the "Explanation" appended to Section 124A of the Indian Penal Code.

Mr. Asquith's speech fell naturally into two parts. In the first place he read from the printed report of the recent proceedings in Bombay, with only rare comment, the salient passages in the incriminated articles and in the judge's summing up. In the second place he appealed to the Court to recommend to Her Majesty the Queen that leave should be given for an appeal on the ground of flagrant misdirection of the jury. The opening survey of the trial at Bombay brought up some interesting points. The two incriminated "articles," as they are termed, which appeared in Mr. Tilak's journal, the Poona *Kesari*, of June 15 last, were not "articles" in the sense of expressions of editorial opinion. One was a report of a meeting—the Shivaji coronation festival. The other was a set of imaginative verses from a contributor, purporting to represent the utterances of the Mahratta hero Shivaji upon being aroused from the long sleep of death. Between the two was printed a leading article on the Queen's Jubilee, which was admittedly unexceptionable in tone. The first article, Mr. Asquith contended, merely reported a purely academic discussion upon the point whether the departed hero Shivaji was right or wrong in putting Afzul Khan to death; as if, for example, a philosophical society in ancient Greece had debated the question whether Ulysses was justified in burning out the eye of Cyclops. The gist of the reported argument was that Shivaji, like Napoleon or Julius Cæsar, must be judged by something different from the ordinary moral standard. Mr. Tilak said in his speech: "The laws which bind society are for common men like yourselves and myself. No one seeks to trace the genealogy of a Rishi nor to fasten guilt upon a king." That, said Mr. Asquith, may or may not be good ethics; but is a journalist guilty of inciting to disaffection because he reports the philosophical debate? As for the allegorical poem, "Shivaji's Utterances," that was chiefly, so far as it related to the present time, a protest against overtaxation and similar grievances under which it was suggested the people of India laboured. Mr. Asquith spent nearly an hour and a-half in reading, hurriedly enough and often in an undertone difficult to catch, the leading passages from the report before him. Closing the book and clasping his hands behind his back, he proceeded in sterner and unmistakable tones to deal with Mr. Justice Strachey's interpretation of the law. Section 124A of the Indian Penal Code, under which Mr. Tilak was indicted, runs as follows:—

> Whoever by words, either spoken or intended to be read, or by signs or by visible representation or otherwise excites or attempts to excite feelings of disaffection to the Government established by law in British India shall be punished with transportation for life or for any term to which fine may be added, or with imprisonment for a term which may extend to three years to which fine may be added, or with fine.

To this section, however, the following "Explanation" is added:—

> Such a disapprobation of the measures of the Government as is compatible with a disposition to render obedience to the lawful authority of the Government and to support the lawful authority of the Government against unlawful attempts to subvert or resist that authority is not disaffection. Therefore, the making of comments on the measures of the Government with the intention of exciting only this species of disapprobation is not an offence within this clause.

The crucial question is, therefore, what is the mark that distinguishes legitimate disapprobation from attempts to excite disaffection. The "Explanation," Mr. Asquith declared, made the answer perfectly clear. The mark, the test, the criterion of legitimate disapprobation was compatibility with a disposition to render obedience to the lawful authority of the Government. Sedition had been aptly described as disloyalty in action, and that was an accurate description of disaffection under the Indian Penal Code. This was Mr. Asquith's leading point, and he urged it with a lucidity, an incisiveness, and a strength of conviction which sent a thrill of satisfaction through many of his hearers. It was the duty of the judge, he said, to press upon the jury again and again that they should bear the criterion in mind, and above all else ask themselves whether the publication of the incriminated articles was or was not compatible with a disposition on Mr. Tilak's part to obey the Government. Yet what had Mr. Justice Strachey done? Far from pressing this fundamental consideration upon the jury, he had overlooked it himself. He had said that disaffection—which was not a "term of art," but a popular word—meant feelings of ill-will, great or small, intense or mild. He had actually laid it down that disaffection meant "absence of affection," and had cited Sir Comer Petheram as responsible for that astounding proposition, while what Sir Comer Petheram had said was, that disaffection was the "contrary" of affection. More than that, Mr. Justice Strachey had misinterpreted the function of the "Explanation" added to Section 124A. He had treated it as an "exception"—in other words, an exhaustive enumeration of all the cases which were not intended to fall within the section while, in fact, it was intended to explain by means of an illustration *per contra* the meaning of the section. Mr. Asquith did not mince his words. He spoke of "grievous unfairness," "manifest injustice," and even "absurdity." Mr. Justice Strachey had gone so far as to insist upon a wire-drawn distinction between "the measures of the Government" and "the Government itself"—meaning by measures only legislative measures, and arguing that so soon as adverse criticism passed from a specific enactment to the general policy and conduct of the Administration, it passed from the region of legitimate disapprobation into the region of criminal disaffection. It was here that Lord Hobhouse and Lord Davey put questions to Mr. Asquith, and in the course of a few minutes' conversation Mr. Asquith seemed to drive his point home, and even to secure the acquiescence of those two members of the Court. "My interpretation of the law," he said in effect, "is not that one must limit one's criticism to specific legislative measures, but that one may publish an indictment of the general policy of the Government, always provided that the indictment is animated by and consistent with a certain spirit—a spirit, namely, compatible with obedience to lawful authority. It is not the scope of one's criticism, but the temper of the critic that matters, and the test of the temper of the critic is whether it is or is not calculated to lead to disloyalty in act." That—and the grave consequences that must flow from the erection of Mr. Justice Strachey's ruling into a precedent—was the note upon which Mr. Asquith concluded. Thereupon Mr. Cohen, in a single sentence, urged on behalf of the India Office that the case was not of the kind in which, according to precedent, the Judicial Committee could suitably interfere. The Court, however, retired to consider its decision, which was announced ten minutes later by the Lord Chancellor. The terms of the decision came as a startling surprise. To refuse the application on technical grounds, or to hold that in spite of misinterpretation of the law no such substantial injustice had been proved as to warrant special leave to appeal—either of these results would have been normal and unexciting. But the Lord Chancellor, in announcing that the application was refused, deliberately went out of his way to express agreement with Mr. Justice Strachey's summing-up. It is true that he did not give reasons for this agreement, and, therefore, the matter may be contested again. But for the present, at any rate, it is apparently to be good law in India that absence of affection is disaffection, and that small and mild feelings of

ill-will to the Government bring the culprit within the reach of the Indian Penal Code. It is strictly true to say that in these circumstances the decision sent home the crowd of Indians and others who had come to hear Mr. Asquith's argument with feelings of surprise amounting almost to consternation.

Under the heading "Russianising India" the *Star* (November, 20) printed the following editorial note:—

The cardinal point in yesterday's proceedings before the Judicial Committee of the Privy Council in the Tilak case is the certificate of merit which the Lord Chancellor—a colleague of Lord George Hamilton's in the Cabinet and a rather unfamiliar figure on the Judicial Committee—went out of his way to give to Mr. Justice Strachey's law. The *Standard*, we see, says bluntly to day: "the Judicial Committee saw nothing in the judge's summing-up to dissent from." It was not quite so amazing as that. What the Lord High Jobber said was:—

> Their lordships are of opinion, taking the view of the whole of the summing-up, which is of very great length, that there is nothing in that which, in their Lordships' opinion, calls upon them to indicate any dissent from or necessity to correct what is therein contained, looking at the summing-up as a whole, and looking at each part of what was said by the light of what else was said.

That, it seems to us, is a long way of saying that in all essentials Mr. Justice Strachey was right. What then were the vital points of his summing-up? They were these:—

1. He completely failed to impress upon the jury in the Tilak case that under Section 124A of the Indian Penal Code and the added "explanation," the criterion of disaffection as distinguished from disapprobation is that the former is not "compatible with a disposition to render obedience to the lawful authority of the Government."
2. Mr. Justice Strachey treated the "Explanation" as an "exception," and held that while any criticism of the "measures" of the Government—in the restricted sense of specific legislative or administrative acts—was legitimate, any adverse criticism on "the Government itself" was disaffection.
3. His whole summing-up was coloured and vitiated by a glaring misquotation of Sir Comer Petheram. Sir C. Petheram had said that disaffection was "the contrary of affection." Mr. Justice Strachey perverted this into "the absence of affection."

These are vital points, which are not in the least degree modified "by the light of what else was said." So that afte Lord Halsbury's gratuitous and (in the strict sense) extraordinary testimonial to Mr. Justice Strachey's summing-up it becomes the law in India that nobody may criticise "the Government itself"—in other words, we suppose, any department or representative of the constituted authority—except in terms of thorough-going approval and positive affection. If this is the law it will plainly have to be altered.

The *Star* added the following in its news columns under the heading: "The Tilak Appeal: A Cabinet Minister—the Lord Chancellor—pats Mr. Justice Strachey on the back":—

It is not often that the Lord High Jobber graces the Judicial Committee of the Privy Council. But he was present yesterday at the important hearing of the Tilak appeal, in which the chief contention for the appellant was that the Bombay judge, in his summing-up, had grossly misdirected the jury. The whole of the morning was taken up with an exhaustive speech by Mr. Asquith, the leading counsel in support of the application. The business of their lordships was merely to hear Mr. Asquith, and then to pronounce their decision. One does not know (writes a *Star* man who was present in court) whether Lord Halsbury heard Mr. Asquith or not. But if he was paying attention, his manner did him an injustice. Throughout the morning he was receiving and sending messages—reading and writing letters. An onlooker suggested that this ostentatious disregard of Mr. Asquith's argument was Lord Halsbury's revenge for Mr. Asquith's recent description of the Darling appointment as a most startling exercise of political patronage. Be this as it may. Lord Halsbury's demeanour contrasted curiously with the demeanour of Lord Hobhouse, who paid the closest attention to Mr. Asquith's speech from first to last, and industriously noted in the margin of the official report of the proceedings at Bombay the references which Mr. Asquith mentioned. Nor was that all. It is usual for members of the Judicial Committee continually to question counsel as he develops his argument and makes his points. But yesterday, although Lord Hobhouse and Lord Davey occasionally conversed with Mr. Asquith, the Lord Chancellor did not from the beginning to the end address so much as a syllable to him. But when the end came, Lord Halsbury pounced down upon the appeal, and not only refused to grant it, but—travelling altogether beyond the proper scope of the proceedings—deliberately patted Mr. Justice Strachey on the back. It seemed a pity that Lord Halsbury's friend and colleague, Lord George Hamilton, was not present to witness the zeal of the political lawyer.